



FEDERAL COMMUNICATIONS COMMISSION  
WASHINGTON, D.C. 20554

October 14, 2010

**VIA EMAIL AT SALES@PHONEJAMMER.COM**  
**AND FACSIMILE AT 44700 596 8880**

Victor McCormack  
Phonejammer.com  
P.O. Box 60405  
London, E8 9BP, United Kingdom

**Re: File No. EB-09-SE-242; Provision of Incorrect Material Factual Information in a  
Commission Investigation**

Dear Mr. McCormack:

This is an official **CITATION**, issued pursuant to section 503(b)(5) of the Communications Act of 1934, as amended ("Communications Act"),<sup>1</sup> to Phonejammer.com ("Phonejammer") for providing incorrect, material factual information to the Spectrum Enforcement Division ("Division") of the Enforcement Bureau ("Bureau") in violation of section 1.17(a)(2) of the Commission's rules ("Rules").<sup>2</sup> Specifically, in response to recent Commission inquiries, Phonejammer claimed that it does not market, and has not shipped or distributed, radio frequency devices designed to intentionally interfere with licensed cellular and Personal Communications Services ("PCS") ("phone jammers") to consumers in the United States. However, these statements are flatly contradicted by record evidence that, as recently as April and September of 2009, Phonejammer sold and shipped phone jammers to consumers in the United States. The Commission requires parties to take appropriate affirmative steps to determine the truthfulness of information it submits to the agency. As explained below and as provided in the Communications Act, future violations of the Rules in this regard may subject Phonejammer to monetary forfeitures.

***Background.***

On November 9, 2009, the Bureau's Dallas, Texas Field Office ("Dallas Field Office") received a complaint from a wireless service provider regarding interference to its authorized cellular and PCS frequencies in the 800 MHz and 1900 MHz bands. The complainant indicated that it had traced the interference to a business located in Carrollton, Texas. During the course of its investigation of the complaint, the Dallas Field Office determined that the interference had been caused by a 5 watt adjustable power phone jammer identified as Phonejammer model number PJ005 ("Model PJ005"), installed at a Carrollton business.<sup>3</sup> An employee of the Carrollton business admitted to purchasing the Model PJ005

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<sup>1</sup> 47 U.S.C. § 503(b)(5).

<sup>2</sup> 47 C.F.R. § 1.17(a)(2).

<sup>3</sup> See *Cosmetology Career Center*, Warning of Unauthorized Operation and Interference to Licensed Radio Stations, Document Number W201032500004 (Enf. Bur., Dallas Field Office, November 24, 2009).

from Phonejammer on April 21, 2009 using Phonejammer's website, "phonejammer.com." The employee subsequently relinquished the Model PJ005 phone jammer to the Dallas Field Office and also provided a copy of an April 21, 2009 invoice sent by e-mail from sales@phonejammer.com for the sale and shipment of Model PJ005. The Phonejammer invoice clearly shows a billing and shipping address in Carrollton, Texas.

On February 4, 2010, the Division issued a letter of inquiry ("LOI")<sup>4</sup> initiating an investigation into Phonejammer's marketing of phone jammers in the United States. In its March 3, 2010 response ("LOI Response"),<sup>5</sup> Phonejammer, through counsel, acknowledged that www.phonejammer.com is its website, but denied marketing or shipping phone jammers to consumers in the United States.<sup>6</sup> Specifically, Phonejammer claimed that it "does not market to the United States, and has not shipped or distributed units to the United States."<sup>7</sup> Phonejammer also stated that it clearly discloses on its website that its phone jammers are not marketed in the United States, that use of its phone jammers is prohibited by law in the United States, and that its phone jammers are not authorized for use in the United States.<sup>8</sup>

In March 2010, during the course of investigating a complaint from the St. Lucie County, Florida Sheriff's Office ("SLCSO") regarding interference to cellular and PCS frequencies utilized by SLCSO detectives, the Bureau's Tampa, Florida Field Office ("Tampa Field Office") traced the interference to a phone jammer installed at a business located in Port St. Lucie, Florida. The phone jammer was identified as an eight watt adjustable power phone jammer, Phonejammer model number PJ006 ("Model PJ006"). The owner of the Port St. Lucie business admitted to purchasing the Model PJ006 from Phonejammer on September 24, 2009 using Phonejammer's website, www.phonejammer.com. The owner relinquished the Model PJ006 phone jammer to the Tampa Field Office and also provided a copy of his credit card statement showing a charge dated September 25, 2009, for the purchase and shipment of the device from Phonejammer.

***Applicable Law and Violations – Provision of Incorrect, Material Information.***

The Commission's rules require truthfulness and candor in all written or oral statements submitted to the agency and its staff. Section 1.17 of the Rules<sup>9</sup> provides, in pertinent part, that in any investigation, no person shall:

- (1) In any written or oral statement of fact, intentionally provide material factual information that is incorrect or intentionally omit material information that is necessary to prevent any material factual statement that is made from being incorrect or misleading; and
- (2) In any written statement of fact, provide material factual information that is incorrect or omit material information that is necessary to prevent any material factual statement that is made from being incorrect or misleading without a

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<sup>4</sup> See Letter from Kathryn S. Berthot, Chief, Spectrum Enforcement Division, Enforcement Bureau, Federal Communications Commission, to Victor McCormack, Phonejammer.com (February 4, 2010).

<sup>5</sup> See Letter from Harbottle & Lewis LLP, Counsel for Phonejammer.com, to Kathryn S. Berthot, Chief, Spectrum Enforcement Division, Enforcement Bureau, Federal Communications Commission (March 3, 2010).

<sup>6</sup> *Id.* at 1.

<sup>7</sup> *Id.*

<sup>8</sup> *Id.* at 2.

<sup>9</sup> 47 C.F.R. § 1.17.

reasonable basis for believing that any such material factual statement is correct and not misleading.

Any person who has received a letter of inquiry from the Commission or its staff or is otherwise the subject of a Commission investigation must comply with section 1.17 of the Rules.<sup>10</sup> In expanding the scope of section 1.17 in 2003 to include written statements that are made without a reasonable basis for believing the statement is correct and not misleading, the Commission explained that this requirement was intended to more clearly articulate the obligations of persons dealing with the Commission, ensure that they exercise due diligence in preparing written submissions, and enhance the effectiveness of the Commission's enforcement efforts.<sup>11</sup> Thus, even in the absence of an intent to deceive, a false statement provided without a reasonable basis for believing that the statement is correct and not misleading constitutes an actionable violation of section 1.17 of the Rules.<sup>12</sup> As the Commission has stated:

in preparing written statements in fact-based adjudications and investigations, regulatees are on heightened notice that they must have a reasonable basis to believe that what they say is correct and not misleading. In these circumstances, we consider it justified to require that parties use due diligence in providing information that is correct and not misleading to the Commission, including taking appropriate affirmative steps to determine the truthfulness of what is being submitted. A failure to exercise such reasonable diligence would mean that the party did not have a reasonable basis for believing in the truthfulness of the information.<sup>13</sup>

Notwithstanding Phonejammer's claim in its LOI Response that it "does not market phone jammers in the United States" and "has not shipped or distributed units to the United States," the record before us clearly demonstrates that on at least two occasions within the past year, Phonejammer has marketed (including selling and shipping) phone jammers to individuals in the United States. As noted above, an individual in Carrollton, Texas purchased a Model PJ005 phone jammer via Phonejammer's website on April 21, 2009, and an individual in Port St. Lucie, Florida purchased a Model PJ006 phone jammer via Phonejammer's website on September 24, 2009. Phonejammer billed both individuals, collected payment, and shipped both devices to addresses in the United States.

Accordingly, Phonejammer had no reasonable basis for believing that the information it provided in its Response regarding its marketing of jamming devices in the United States was correct and not misleading. Based on the evidence in the record, we believe that, had Phonejammer exercised a minimum of diligence prior to the submission of its LOI Response, it presumably would not have

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<sup>10</sup> 47 C.F.R. § 1.17(b)(4).

<sup>11</sup> *See Amendment of Section 1.17 of the Commission's Rules Concerning Truthful Statements to the Commission*, Report and Order, 18 FCC Rcd 4016, 4021 (2003), *recon. denied*, Memorandum Opinion and Order, 19 FCC Rcd 5790, *further recon. denied*, Memorandum Opinion and Order, 20 FCC Rcd 1250 (2004).

<sup>12</sup> *See id.* at 4017 (stating that the revision to section 1.17 of the Rules is intended to "prohibit incorrect statements of omissions that are the results of negligence, as well as an intent to deceive").

<sup>13</sup> *See id.* at 4021.

submitted incorrect or misleading material factual information.<sup>14</sup> We therefore find that Phonejammer violated section 1.17(a)(2) of the Rules by providing material factual information that is incorrect without a reasonable basis for believing that the material factual information was correct.

### ***Future Compliance.***

If, after receipt of this Citation, Phonejammer violates the Communications Act or the Rules by engaging in conduct of the type described herein, the Commission may impose monetary forfeitures not to exceed \$16,000 for each such violation or each day of a continuing violation and up to \$112,500 for any single act or failure to act.<sup>15</sup>

You may respond to this citation within thirty (30) days from the date of this letter either through (1) a personal interview at the Commission's Field Office nearest to your place of business, or (2) a written statement. Your response should specify the actions that Phonejammer has taken or will take in the future to ensure that it does not violate the Rules governing the provision of material, factual information to the Commission.

Under the Privacy Act of 1974,<sup>16</sup> we also hereby inform you that the Commission's staff will use all relevant material information before it, including information that you disclose in your interview or written statement, to determine what, if any, enforcement action is required to ensure your compliance with the Communications Act and the Rules. Please also note that section 1.17 of the Rules requires that you provide truthful and accurate statements to the Commission.<sup>17</sup> In addition, the knowing and willful making of any false statement, or the concealment of any material fact, in reply to this Citation is punishable by fine or imprisonment.<sup>18</sup>

### ***Contact Information.***

Please call Nissa Laughner at 202-418-1160 if you wish to schedule a personal interview. You should schedule any interview to take place within thirty (30) days of the date of this letter. You should send any written statement within thirty (30) days of the date of this letter to:

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<sup>14</sup> See, e.g., *Syntax-Brilliant Corporation*, Forfeiture Order and Notice of Apparent Liability for Forfeiture, 23 FCC Rcd 6323, 6342 (2008) (finding that a television manufacturer apparently provided incorrect material information concerning its importation and interstate shipment of non-DTV-compliant televisions without a reasonable basis for believing that the information was correct and not misleading, in violation of section 1.17(a)(2) of the Rules); *Citicasters License, L.P.*, Memorandum Opinion and Order and Notice of Apparent Liability for Forfeiture, 22 FCC Rcd 19324, 19338 (2007) (forfeiture paid) (finding that a licensee's false certification that it had not violated the Communication's Act or any Commission rules during the preceding license term, although not made with the intent to deceive the Commission, had no reasonable basis and therefore, apparently violated section 1.17(a)(2) of the Rules).

<sup>15</sup> See 47 C.F.R. § 1.80(b)(3). These amounts are subject to further adjustment for inflation (*see id.* § 1.80(b)(5)), and the forfeiture amount applicable to any violation will be determined based on the statutory amount designated at the time of the violation.

<sup>16</sup> See 5 U.S.C. § 552a(e)(3).

<sup>17</sup> 47 C.F.R. § 1.17 ("... no person subject to this rule shall; (1) In any written or oral statement of fact, intentionally provide material factual information that is incorrect or intentionally omit material information that is necessary to prevent any material factual statement that is made from being incorrect or misleading; and (2) In any written statement of fact, provide material factual information that is incorrect or omit material information that is necessary to prevent any material factual statement that is made from being incorrect or misleading without a reasonable basis for believing that any such material factual statement is correct and not misleading.").

<sup>18</sup> See 18 U.S.C. § 1001.

Kathryn S. Berthot  
Chief, Spectrum Enforcement Division  
Enforcement Bureau  
Federal Communications Commission  
445-12<sup>th</sup> Street, S.W., Rm. 3-C366  
Washington, D.C. 20554

Thank you in advance for your anticipated cooperation.

Sincerely,

Kathryn S. Berthot  
Chief, Spectrum Enforcement Division  
Enforcement Bureau  
Federal Communications Commission